

## SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

**SUBJECT:** Schweizer property

**DEPARTMENT:** County Attorney's Office

**DIVISION:** Litigation

**AUTHORIZED BY:** Lola Pfeil

**CONTACT:** Sharon Sharrer

**EXT:** 7257

**MOTION/RECOMMENDATION:**

Approval of a mediated settlement with the property owner, Garth A. Schweizer, individually and as member manager of Monroe Road, LLC, and with Anthologia, Inc., d/b/a Garth A. Schweizer, Landscape Architect, relating to Parcel Numbers 128/728A/728B/728C on the County Road 15 road improvement project. Mr. Schweizer's Trust is the President of Anthologia, Inc., which operates a commercial landscape architecture business on the site and claimed business damages. The mediated settlement proposed is at \$1,189,926.14 for full settlement, jointly and severally, of all claims for compensation from Seminole County including the value of the land and improvements taken, severance damages, statutory interest, business damages, attorney fees and cost reimbursements. Judge Simmons.

District 5 Brenda Carey

Robert A. McMillan

**BACKGROUND:**

see attached

**STAFF RECOMMENDATION:**

Staff recommends that the Board approve the mediated settlement with the property owner, Garth A. Schweizer, individually and as member manager of Monroe Road, LLC, and with Anthologia, Inc., d/b/a Garth A. Schweizer, Landscape Architect, relating to Parcel Numbers 128/728A/728B/728C on the County Road 15 road improvement project.

**ATTACHMENTS:**

1. Schweizer property

<b>Additionally Reviewed By:</b> No additional reviews
---



**COUNTY ATTORNEY'S OFFICE  
MEMORANDUM**

To: Board of County Commissioners

From: Matthew G. Minter, Deputy County Attorney *Matthew G. Minter*  
Ext. 5741

Concur: Antoine Khoury, P.E., Assistant County Engineer/Engineering Division *AKH-10-09*

Date: April 10, 2009

Subject: Settlement Authorization  
County Road 15  
Parcel Nos. 128/728A/728B/728C  
Property owner: Garth A. Schweizer individually and as member  
manager of Monroe Road, LLC  
Business Tenant: Anthologia, Inc. d/b/a Garth A. Schweizer, Landscape  
Architect  
Seminole County v. O'Dell, et al  
Case No. 2007-CA-1455-13-K

---

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) as to Parcel Nos. 128/728A/728B/728C including the business damage claim of Anthologia, Inc. d/b/a Garth A. Schweizer, Landscape Architect ("Anthologia") on the County Road 15 Project ("C15") at \$1,189,926.14 inclusive of land value, improvements taken, severance damages, statutory interest, attorney's fees, experts' fees, cost reimbursements and certain contingencies as discussed below. In addition to monetary compensation, the proposed settlement requires BCC approval of other conditions/terms of the settlement. The compensation component of the settlement is allocated as follows:

\$ 975,000.00	Land, improvements severance damages, statutory interest and business damages
\$ 138,000.00	Attorney's fees
\$ 76,926.14	Experts' fees and cost reimbursements
<u>\$1,189,926.14</u>	

**ADDITIONAL CONDITIONS/TERMS OF SETTLEMENT**

Before the County's taking in this case, the parent tract was a rectangular-shaped parcel with an average depth of approximately 180 feet, and road frontage of approximately 600 feet. After the taking, the depth of the parcel has been reduced to

approximately 110 feet. This reduction in depth creates challenges for the development of the remainder parcel that would not be present if the remainder retained the depth of 180 feet. As a result of the taking, the Owner has made application for, and obtained, a rezoning of the remainder property to the PD zoning classification (approved by the BCC at its April 14, 2009, meeting).

The following additional conditions have been negotiated in lieu of a demand for higher monetary compensation to the property owner in this case, and reflect actions designed to mitigate the impact of the taking on the development potential to the remainder.

a. The setback minimums established as part of the rezoning approval on April 14, 2009.

b. The County will provide a positive out-fall for the remainder property, provided that the property owner's design models the required design storm event for an open basin, provides water quality treatment, and attenuates the storm.

c. County will release the Temporary Construction Easements (TCEs) prior to the expiration date upon completion of the roadway construction activities. The property owner can proceed with development in the TCEs and the County will not delay or deny permits for development to the remainder due to the TCEs.

d. The County agrees to construct, at its sole cost, two (2) driveway aprons, 24-feet in width, as measured at the property line with flares to the roadway edge, at the locations agreed to by the parties. The property owner will provide locations within seven (7) days from the date of final judgment, and the County will agree to the location within seven (7) days from the date thereof. Access to the remainder property shall be to and from C15. The settlement is conditioned upon both parties mutually agreeing to the location of the driveway openings and aprons on C15. The property owner can request in the future, but the County retains its jurisdiction to prohibit any access from the remainder property to Church Street.

e. This settlement is predicated and conditioned upon the size of the remainder property of the property owner, as depicted in both the County's and the property owner's appraisals. The County agrees that no additional right-of-way or roadway facilities for either C15 or Church Street will be required or exacted for the remainder property as part of any development of the remainder property in the future, except upon exercise of an appropriate eminent domain proceeding.

f. The Court will reserve jurisdiction to enforce the terms and conditions of the foregoing conditions and settlement agreement. The County shall pay the allowable fees and costs of the property owner's attorneys and experts.

## **I      PROPERTY**

### **A.      Location Data**

The subject parcels are located along the northwest corner of C15 (Monroe Road) and Church Street in a portion of unincorporated Seminole County, Florida. A location map is attached as Exhibit A and a parcel sketch as Exhibit B.

### **B.      Street Address**

The street address is 728 Monroe Road, Sanford, Florida.

## **II     AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 2006-R-114 on May 9, 2006, authorizing the acquisition of Parcel Nos. 128/728A/728B/728C. The resolution found that County Road 15 is necessary, serves a public purpose and is in the best interests of the citizens of Seminole County. The Order of Take hearing occurred on July 26, 2007 and the Order was entered on August 2, 2007, with title to Parcel No. 128 and the right to use Parcel Nos. 728A, 728B, 728C vesting in Seminole County on August 14, 2007, the date of the agreed upon good faith deposit of \$385,200.00.

## **III    ACQUISITIONS AND REMAINDER**

The parent tract consisted of 2.633 acres and was improved with a residence that had been converted to an office. The area acquired as Parcel No. 128 is .976 acres leaving a remainder of 1.687 acres. There are also three temporary construction easements, Parcel Nos. 728A, 728B, and 728C in the amount of 75, 1,960, and 75 square feet respectively.

## **IV    APPRAISED VALUES**

The County's original report dated November 14, 2006, was prepared by Florida Realty Analysts, Inc., and reported full compensation to be \$262,000.00 for Parcel No. 128, \$200.00 for Parcel No. 728A, \$4,200.00 for Parcel No. 728B and \$200.00 for Parcel No. 728C for a total of \$266,600.00. An additional report updated for the order of take hearing dated July 9, 2007, opined full compensation to be \$285,200.00 (\$280,400.00 for Parcel No. 128, \$200.00 for Parcel No. 728A, \$4,400.00 for Parcel No. 728B and \$200.00 for Parcel No. 728C). The appraisal report only appraised the land, improvements, and possible severance damages. The appraisal report did not encompass business damages. The County retained separate experts, a certified public accountant and an engineer to evaluate Anthologia's business damage claim.

The County received the owner's appraisal on January 11, 2008. The owner's appraisal was prepared by Durrance & Associates, P.A. and opined full compensation for the real property taking in the amount of \$769,100.00 as of August 14, 2007 (the

date of deposit of the good faith estimate of value). This appraisal report did not encompass business damages.

## **V BINDING OFFER**

The County's initial written offer was \$317,100.00, (allocated: \$312,000.00 (128), \$300.00 (728A), \$4,500.00 (728B) and \$300.00 (728C)), exclusive of costs and fees.

## **VI BUSINESS DAMAGES**

At the time of the taking, Anthologia, Inc.'s, business had been in operation since at least on or before January 1, 2001. The facility has operated continuously and uninterrupted in excess of five (5) years at the subject property. Therefore, the business meets the statutory time requirements for business damages.

### **A. Anthologia's Business Damage Report**

Anthologia's attorney hired an expert to prepare the business damage report and opined \$950,350.00 in damages to compensate the business for reduction in income stream and a \$500,000.00 estimate for the cost to reestablish the business to avoid a total loss, or a total of \$1,450,350.00.

Anthologia's theory was that the taking for Parcel Nos. 128 and 728A/728B/728C would require the demolition of the business improvements within the area of taking. Anthologia further claimed that the demolition of these business improvements would result in a loss of business in the amount of \$950,350.00. [Note: As of the date of this report, the building that had served as an office for Anthologia has been demolished for the road project.] Anthologia further asserted that in order to avoid a total wipe out of the business, an estimated amount of \$450,000.00 would need to be spent to reestablish the improvements on-site and to make it whole.

### **B. County's Engineering Analysis and Business Damage Report**

The County retained a certified public accountant and an engineer in addition to its appraiser as its experts on the business damage claim. The engineer found that it will cost \$228,940.14 to reestablish the building on its current site in addition to \$6,875.00 in minor miscellaneous moving costs. Moreover, the County's appraiser has submitted a cost estimate of \$77,582.00 for plants within the area of taking. The total cost estimate amounts to \$313,397.14. Based on the cost estimate and sketch prepared by the engineer, the accountant advised the County that a counteroffer of \$313,397.14 would be reasonable to compensate Anthologia in this case.

## **VII ATTORNEY FEES**

A. Attorney's Fees. The attorney's fee reimbursement totals \$138,000.00 represents a settlement between the County's position of \$106,126.00 and the property owner attorney's position of \$196,175.00.

B. Costs. The owner's cost claim of \$76,926.14 for expert fees and cost reimbursements is reasonable.

## VIII RATIONALE AND COST CONTROL

To recap, the reports opined compensation to the owners as follows:

County:

Updated Appraisal	\$285,300.00
Business damages	<u>\$313,397.14</u>
Total	<u>\$598,697.14</u>

Owner:

Appraisal	\$ 769,100.00
Business damages	<u>\$1,450,000.00</u>
Total	<u>\$2,219,100.00</u>

There was a dramatic difference between the value opinions of the County's experts and the property owner's experts. The midpoint between the County's and owner's positions as set forth above is \$1,408,898.50. A settlement at \$975,000.00 compensation to the owner and the contingencies discussed above is below midpoint. Specifically, if the case did not settle at mediation, the owner's and the County's additional expert costs would likely have been several tens of thousands of dollars higher.

## IX RECOMMENDATION

County staff recommends that the BCC authorize the mediated settlement of \$1,189,926.14 to settle all claims for compensation from Seminole County including statutory interest, business damages, statutory attorney's fees and cost reimbursements.

MGM/dre

Attachments

Exhibit A – Location map

Exhibit B – Parcel sketch

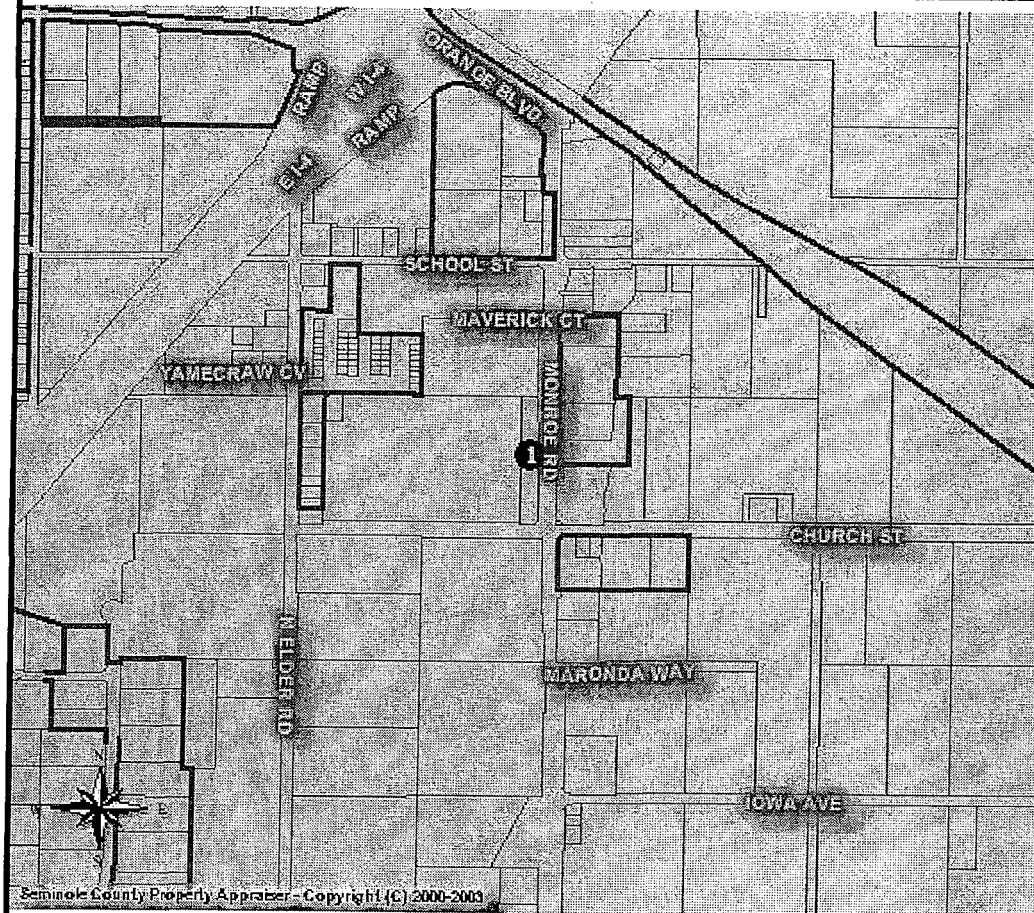
Exhibit C – Site sketch

P:\Users\Dedge\My Documents\Mem\Agenda Item Cr 15 Schweizer Business Damage Settlement.doc

DAVID JOHNSON, CFA, ASA

**PROPERTY  
APPRAISER**

SEMINOLE COUNTY FL

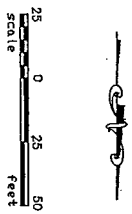
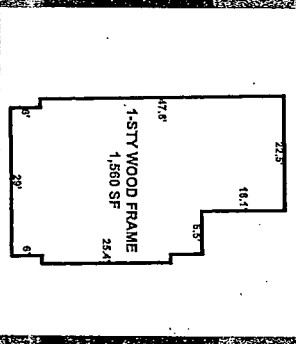
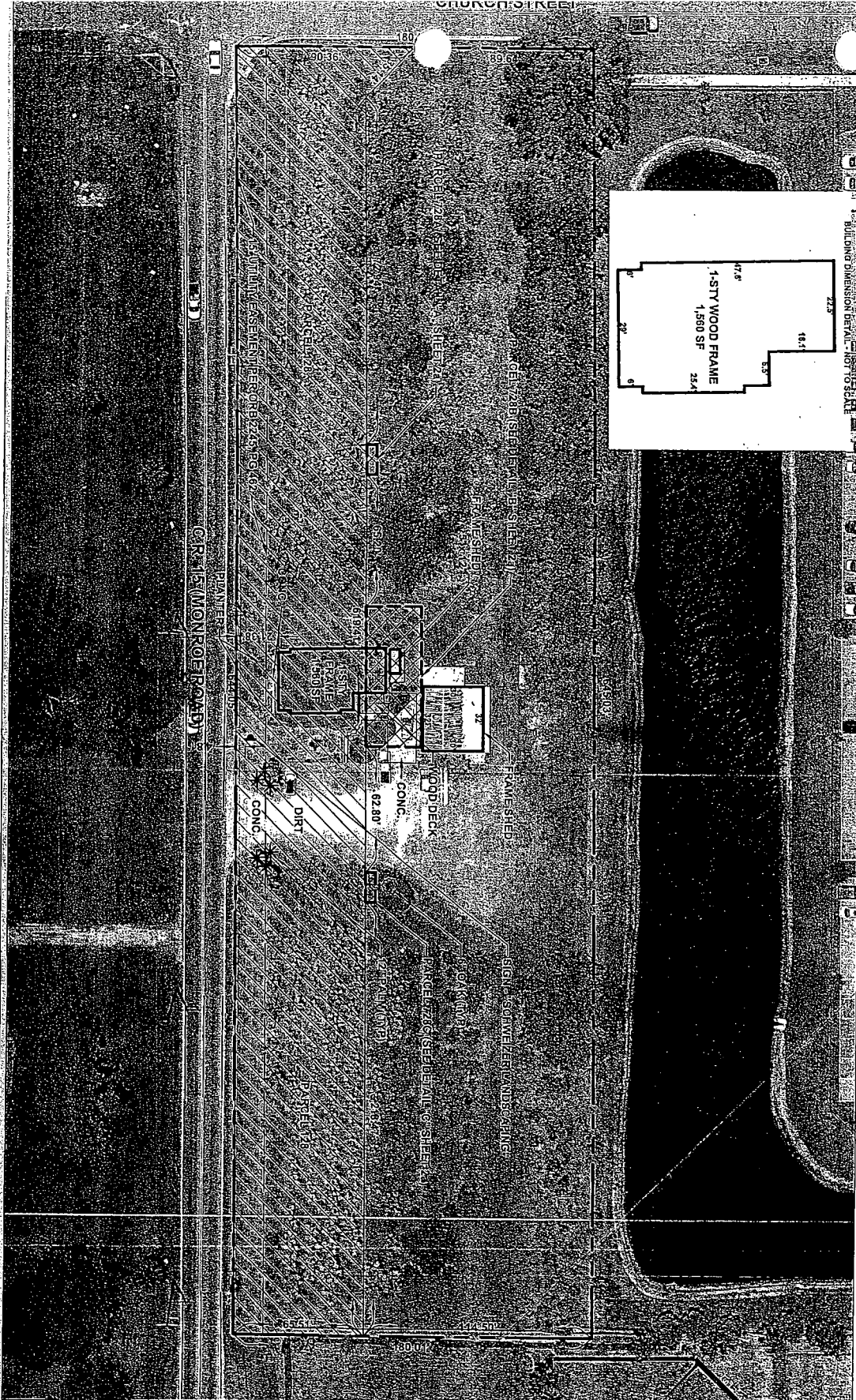
1101 E. FIRST ST  
SANFORD, FL 32771-1488  
407-665-7508

- Legend**
- Selected Features
  - County Boundary
  - Streets
  - Hydrology
  - Subdivision Lines
  - Parcels

Seminole County Property Appraiser - Copyright (C) 2000-2003

Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	1619305AC0000046A	SCHWEIZER GARTH A	213 WOOD LAKE DR	MAITLAND	FL	32751

EXHIBIT A



PARENT TRACT  
AREA OF TAKE  
REMAINDER TRACT  
PROPERTY LINE

2.663 AC  
0.976 AC  
1.687 AC

AREA OF TAKE AND TCE		
PARCEL 128	(42,515 SF) 0.976 AC	<input checked="" type="checkbox"/>
PARCEL 728A	(75 SF) 0.002 AC	<input checked="" type="checkbox"/>
PARCEL 728B	(1,960 SF) 0.045 AC	<input checked="" type="checkbox"/>
PARCEL 728C	(75 SF) 0.002 AC	<input checked="" type="checkbox"/>

EXHIBIT B

**g**

gal consultants  
618 East South Street  
Orlando, Florida 32801  
407-423-6398

SHEET 2  
PROJECT NUMBER  
A00033200  
FILE NAME: 1212-1210-00-00

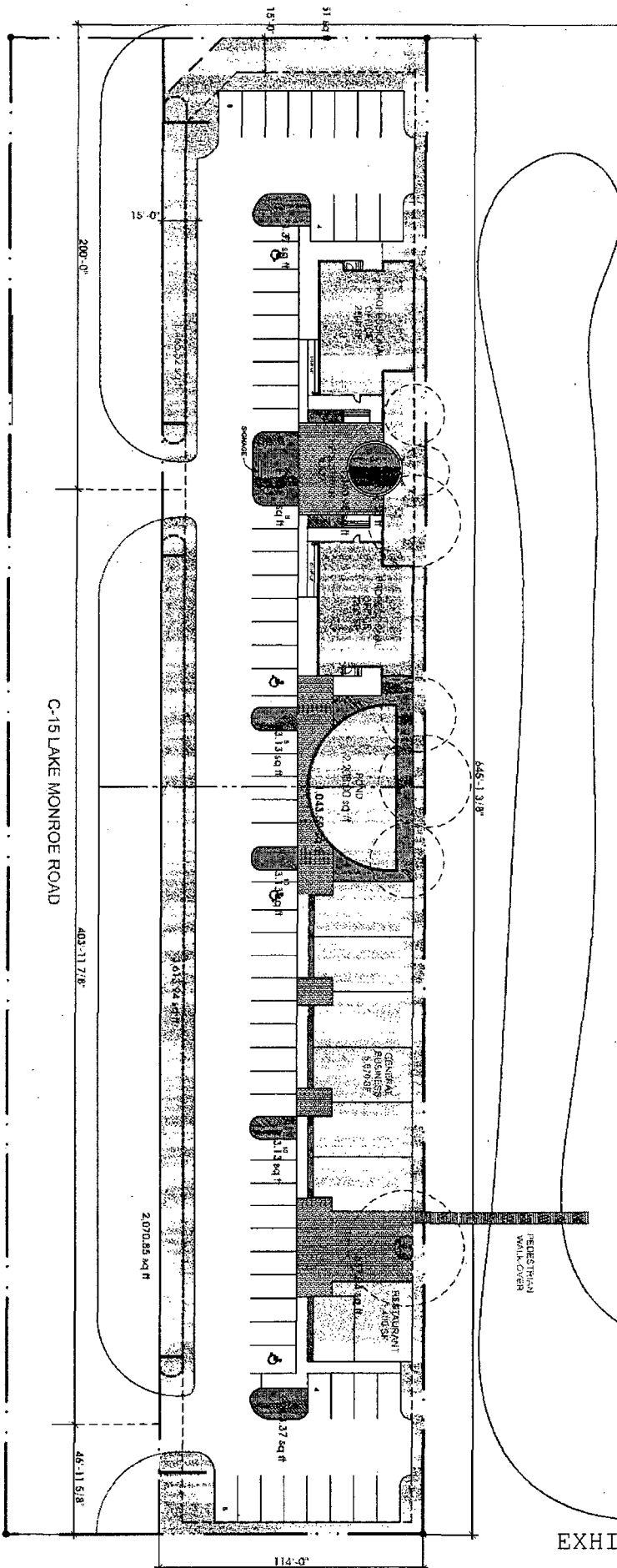
PARENT TRACT : WITH TAKING SHOWN

PARCEL 128/728 A-B-C  
C.R. 15 / MONROE ROAD  
SEMINOLE CO., FLORIDA

SCALE AS SHOWN

DRAWN: [ ] PREP: [ ] APPROVED: [ ]  
CHECKED: [ ] APP. DATE: 9/21/09





**ZONING**  
 PROPOSED PLANNED COMMERCIAL DEVELOPMENT (PCD)

**PARKING**  
 1 SPACE/200 SQ. FT. FOR OFFICE & GENERAL BUSINESS  
 5,010 SF GENERAL BUSINESS, 30 SPACES REQUIRED  
 1 SPACE/SEAT FOR RESTAURANT  
 48 INTERIOR SEATS - 12 SPACES REQUIRED  
 24 EXTERIOR SEATS - 7 SPACES REQUIRED  
 TOTAL PARKING PROVIDED: 65 SPACES

**OPEN SPACE**  
 25% OF PARCEL  
 12,207 SF (14.0 ACRES)  
 25% OF TOTAL SF  
 14,002 SF (16.2 ACRES)  
 RETENTION  
 OPEN POND: 2,200 SF  
 SWALE: 5,000 SF  
 PARKING ISLANDS: 1,400 SF  
 LANDSCAPE AREA: 12,400 SF  
 TOTAL OPEN SPACE: 20,240 SF